

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
EDWARD A. HECHT dba )  
COASTATE CONSTRUCTION, INC. )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 79-62

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for an unlawful outdoor fire allegedly in violation of Section 8.05(1) of respondent's Regulation I, came before the Pollution Control Hearings Board, David Akana, Chairman, and Chris Smith, Member, on July 17, 1979 in Seattle, Washington. Administrator Nancy E. Curington presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230 and WAC 371-08-155.

Appellant was represented by his attorney, Charles F. Diesen. Respondent appeared by and through its attorney, Keith D. McGoffin.

Witnesses were sworn and testified. Exhibits were examined.

NEC/co

1 From testimony heard and exhibits examined, the Pollution Control  
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260 has filed with this Board  
6 a certified copy of its Regulation I containing respondent's regulations  
7 and amendments thereto.

8 II

9 On February 7, 1979, appellant Coastate Construction's employee  
10 started a fire with lumber at a construction site where he was working,  
11 while he was eating lunch. The fire was lit by the employee to warm  
12 his hands, as the weather was cold.

13 III

14 Appellant Coastate Construction was not aware that its employee  
15 lit the fire. All employees are instructed not to light a fire at a  
16 construction site unless a permit had been obtained. The employer was  
17 not benefitted in any way by the employee lighting a fire during his  
18 lunch hour.

19 IV

20 Appellant's employee did not apply for, nor obtain, any permit  
21 from the respondent, Puget Sound Air Pollution Control Agency, before  
22 igniting the fire.

23 V

24 On February 7, 1979, while on patrol in the area, respondent's  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

1 inspector observed a blue plume of smoke emanating from a fire  
2 composed of lumber at appellant's building site. The inspector  
3 suggested the fire be extinguished and the employee did so. The  
4 inspector then issued Notice of Violation No. 16746 to Coastate  
5 Construction Co., handing it to the employee. Notice and Order of  
6 Civil Penalty No. 4142, imposing a civil penalty of \$250, was mailed  
7 to both the appellant and the employee. From this penalty the appellant  
8 appeals.

9 VI

10 Any Conclusion of Law hereinafter stated which may be deemed a  
11 Finding of Fact is hereby adopted as such.

12 From these Findings, the Pollution Control Hearings Board comes  
13 to these

14 CONCLUSIONS OF LAW

15 Section 8.05(1) of respondent's Regulation I states:

16 It shall be unlawful for any person to cause or allow any  
17 outdoor fire other than land clearing burning or residential  
burning except under the following conditions:

- 18 (1) Prior written approval has been issued by the  
19 Control Officer or Board....

20 It is clear that appellant's employee caused an unlawful fire under  
21 Section 8.05(1) of respondent's Regulation I, since he did not obtain  
22 any prior written approval for the fire. The fire in question was  
23 neither a land clearing burning or a residential burning, since it  
24 occurred at a construction site and was composed of lumber.

25  
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1 II

2 The Board concludes, however, that appellant should not be held  
3 liable for this particular fire. The appellant instructs its employees  
4 not to light any fires without permits, the appellant was not aware of  
5 the fire which was lit by the employee during his lunch hour, and the  
6 the appellant did not in any way benefit from its employee's actions.  
7 It is clear that the employee was acting outside the scope of his  
8 employment. Consequently the appellant should not be held responsible  
9 for the employee's actions, and the Notice of Violation and \$250 civil  
10 penalty, as to the appellant, should be set aside.

11 III

12 Any Finding of Fact which should be deemed a Conclusion of Law is  
13 hereby adopted as such.

14 Therefore, the Pollution Control Hearings Board issues this

15 ORDER

16 The \$250 civil penalty is vacated as to the appellant, Coastate  
17 Construction, Inc.

18 DATED this 24th day of September, 1979.

19 POLLUTION CONTROL HEARINGS BOARD

20 

21 DAVID AKANA, Member

22 

23 CHRIS SMITH, Member

24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER